



IAC-FH-CK-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/35718/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 18 January 2016**

**Decision & Reasons Promulgated
On 3 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

D G

~~{ANONYMITY DIRECTION NOT MADE}~~

Respondent

Representation:

For the Appellant: Ms S Sreeraman, Home Office Presenting Officer

For the Respondent: Mr S A Canter, Counsel instructed by Proficient
Immigration Services

DECISION AND REASONS

1. This matter comes before me pursuant to permission having been granted by Designated First-tier Tribunal Judge Zucker dated 6 November 2015. This is my extempore decision. The appeal relates to a decision by First-tier Tribunal Judge Anstis whereby a Decision and Reasons were promulgated on 28 July 2015. The judge at the First-tier Tribunal had made it clear that the appeal had been allowed under the Immigration Rules.

2. The Secretary of State promptly appealed against the First-tier Tribunal Judge's decision and relied on two particular grounds:
 - (1) giving weight to immaterial matters and
 - (2) failing to give adequate reasons on material matters (circumstances in Brazil).
3. In readiness for this appeal the original Appellant, [DG], has lodged a Rule 24 reply. That reply sets out in short that there has been no material or indeed any error of law in the decision of the First-tier Tribunal Judge. It is said that the issue which the judge had to decide was in respect of the Immigration Rules, particularly paragraph 276ADE(1)(vi) and whether or not there were "very significant obstacles to the applicant's integration into Brazil".
4. At the hearing before me this morning the Presenting Officer very carefully and thoughtfully said that in reality she could take the case no further other than to rely on the original grounds which had been drafted. She said having now seen the decision of the First-tier Tribunal Judge that it was clear that the appeal had been allowed pursuant to the Immigration Rules and not Article 8. She said that there had been no public considerations viz. Section 117. The issue therefore was, in effect, one for me to consider.
5. In reply on behalf of the original Appellant, Mr Canter says that he was a little surprised when he saw the grant of permission by Judge Zucker. He said that was because the grant of permission states at paragraphs 2 and 3 the following:
 - "2. The grounds submit that the judge's proportionality assessment was flawed.
 3. It is arguable on the facts of this case that absent sufficient proof that there would be any flagrant denial of the Appellant's human rights by the receiving state, in this case Brazil, there was no sufficient basis for allowing the appeal."
6. Indeed the grounds by the Secretary of State themselves (although not initially specifically referring to the Immigration Rules or Article 8) are indeed in the sort of language that one sees in respect of Article 8 and it is said at 1(c) of the grounds that the Secretary of State relies on the case of **Bensaid**. It is said that the First-tier Tribunal Judge had erred in not considering the case of **Bensaid** and that therefore the decision was wrong in respect of Article 8.
7. Insofar as ground 2 is concerned that does refer to paragraph 276ADE(vi) and it is said that the judge had failed to identify and to explain reasons why the Appellant could not return to Brazil and receive treatment there. It was said that this was more fully identified in the reasons for refusal letter.

8. The difficulty, I suspect, that Judge Anstis had is that there was no Home Office Presenting Officer present at the hearing before him and it does not appear that there was any explanation as to why there was no representation or explanation from the Home Office, but in any event it is quite clear that the First-tier Tribunal Judge did consider the reasons for refusal letter and indeed it was considered in some detail.
9. The real issue in this case related to the difficulties which the original Appellant was facing here in the United Kingdom and, as the judge noted at paragraph 7:

“From the refusal letter I take it that the Respondent considers that the Appellant would only suffer ‘initial difficulty’ on her return to Brazil and that although the Appellant may experience a degree of temporary hardship it is expected that these difficulties could be overcome, bearing in mind her common language and in particular her familiarity with Brazil customs and culture.”
10. The Appellant suffers with dementia. The evidence in respect of what the judge was satisfied about showed some very significant difficulties arise from that dementia. The Appellant for example has very significant problems in terms of memory. She is not even able to recall her family members and others. For example, at paragraph 5(iv) it is said in the First-tier Tribunal Judge’s decision:

“A letter from Brent Social Services saying that ‘[DG] is a vulnerable adult ... [DG] has been diagnosed with Alzheimer’s and her retention is very poor. She is at risk of wandering and can be very forgetful which puts her at risk of self-harm.’”
11. The effects of Alzheimer’s and dementia are well known. As the judge noted here, it was not simply a case of whether or not treatment for Alzheimer’s or dementia is available in Brazil, it was what would happen if this particular Appellant on these particular facts was returned to Brazil. Although in the past she knew where her family might be, she does not now. This Appellant was not in the same situation as other returnees with family in their home country. She would arrive in Brazil, in effect, not knowing where she is, not having the assistance available to her from family and thereby at a particular risk.
12. It was those facts that enabled the judge to then conclude at paragraphs 11, 12 and 13 as follows when the judge said:

“11. The Respondent has suggested that this difficulty will only be temporary but the Appellant’s condition is not one that anyone has suggested will improve and if she is not able to explain herself on her return to Brazil it is difficult to see how there will be any improvement in her personal circumstances. On the contrary, without being able to explain the support she needs her circumstances are likely to worsen.

...
13. On that basis, I find that the Appellant would face very significant obstacles to her integration into Brazil. She would simply not be able

to explain herself or avail herself of appropriate support in Brazil and there are no friends or family there who she is in contact with who could assist her. Her appeal must succeed under the Immigration Rules.”

13. The reality of the argument from the Secretary of State is that there needed to be “a holistic assessment” of the factors and the background. That may well have been so in respect of an Article 8 assessment but the judge made it clear that he was not considering this case under Article 8. Instead it was an appeal allowed under the Immigration Rules, and, as Mr Canter has rightly pointed out, the Upper Tribunal has had cause to consider arguments in respect of the interrelationship between Section 117A to D and factors relating to Article 8. He reminds me of the case of **Bossade (ss.117A-D-interrelationship with Rules) [2015] UKUT 00415 (IAC)**, a decision of Upper Tribunal Judge Storey and Upper Tribunal Judge Dawson from 20 April last year, and if I refer in particular to the judicial head note at paragraph 3, it is said as follows:

“In the context of foreign criminal cases [I interpolate here to say that this is not a foreign criminal case but nonetheless the rest of this becomes relevant] (because the provisions found in Part 13 of the Rules are a complete code encompassing both stages of the Article 8 assessment), this means that Part 5A considerations have no direct role at the first stage when a court or Tribunal is deciding whether an applicant meets the substantive conditions of paragraphs 399 or 399A of the Immigration Rules. They only have direct application at the second stage, viz. assessment under the Rules that involve a proportionality assessment: viz. paragraph 398 and (in revocation cases) paragraph 390A. In cases other than those concerning deportation of foreign criminals, where the Rules are not a complete code, it may still be necessary to conduct this second stage outside the Rules: see **Secretary of State for the Home Department v A] (Angola) [2014] EWCA Civ 1636** at [39].”

14. Therefore, if this were an appeal under Article 8 there may well have been very different considerations. Ultimately the judge very clearly found, with the assistance that was available to her, that there were very significant obstacles to this Appellant integrating in Brazil. I make it clear that this is not to hold against the Secretary of State that was the failure of legal representation at the hearing but nonetheless, making the best that the judge was able to of the reasons for refusal letter and the evidence which was available to her she came to a lawful decision. It is not necessarily a decision which all judges would have made, but in my judgment it is clear that it is a decision which shows no error of law. Mere disagreement with the decision is not sufficient to overturn it. The Judge did give adequate reasons for allowing the appeal and did consider the factors in respect of section 117 and did not have to specify each and every part of it. In the circumstances the decision of Judge Anstis stands.

Notice of Decision

The Secretary of State’s appeal is dismissed. The original decision of the First tier Tribunal Judge stands.

~~No anonymity direction is made.~~

Signed

Date

Deputy Upper Tribunal Judge Mahmood